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PATENT APPLICATION
Serial No.: 09/900,808

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

AF # 787
Lee Appeal Brief
S. J. Castellano

In re Application of: SHACKLEE, Franky Lee
Serial No.: 09/900,808
Filing Date: July 6, 2001
Group Art Unit: 3727
Examiner: S. J. Castellano
Title: **AMMUNITION SHIPPING AND STORAGE
CONTAINER AND METHOD**

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I hereby certify that the attached Appeal Brief (10 pages), Appendix A (5 pages) filed in triplicate, a check in the amount of \$330.00 for the required filing fee (1 check), a Baker Botts return postcard (1 card), this Certificate of Mailing, and a Baker Botts, LLP acknowledgment return postcard (1 postcard) are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the 3rd day of December, 2003, addressed to Mail Stop Appeal Brief – Patents, Commissioner of Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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APPEAL BRIEF

A timely Notice of Appeal was filed in order to initiate an appeal from the action of the Primary Examiner in finally rejecting Claims 24-26, 28-37, and 43-47 in the Office Action mailed July 3, 2003 (the "Final Office Action"), and the Advisory Action mailed September 12, 2003. This Appeal Brief is being filed pursuant to the provisions of 37 C.F.R. §1.192. A separate transmittal letter serves to transmit this Appeal Brief in triplicate, and serves to transmit a check in the amount of \$330.00 (Fee Code 1402) under 37 C.F.R. §§1.192(a) and 1.17(c) to cover the large entity fee for filing this Appeal Brief.

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330.00 OP ' **REAL PARTY IN INTEREST**

The present application is a Continuation of a parent application (U.S. Serial No. 09/224,218 filed December 30, 1998, issued as U.S. Patent 6,290,087B1 on September 18, 2001). The assignee of record of the present application is Raytheon Company, by virtue of:

DAL01:769383.1

1. an Assignment recorded in the assignment records of the U.S. Patent and Trademark Office on February 22, 1999 at Reel 9806, Frame 0248, which transferred the parent application (and any continuing applications) from the inventors to Raytheon Company.

2 **RELATED APPEALS AND INTERFERENCES**

Applicant believes that there are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

3 **STATUS OF CLAIMS**

Claims 24-26, 28-37, and 43-47 stand finally rejected, pursuant to the Final Office Action mailed July 3, 2003. Claims 27 and 48 stand objected to by the Examiner, as being dependent upon a rejected base claim, but are acknowledged by the Examiner to contain allowable subject matter. Applicant respectfully requests that the objections of Claim 27 and 48 be held in abeyance, pending the outcome of this appeal. Claims 24-26, 28-37, and 43-47 are all presented for appeal.

4 **STATUS OF AMENDMENTS**

Appellant filed a response (the "Response") to the Final Office Action mailed July 3, 2003. No claims were amended in the Response. Furthermore, no claims have been amended since the July 3, 2003 mailing date of the Final Office Action.

5 **SUMMARY OF INVENTION**

A container includes a storage vessel coupled with a removable end cap at one end. *See* page 7, lines 2-17; FIGURES 1-3, and 9. A first flange extends from the exterior surface of the vessel and a second flange extends from the exterior surface of the end cap. *See* page 8, lines 12-24; FIGURES 2-3. A stacking lug having a cylindrical opening is

operable to receive the storage vessel therein, and provides for the stacking of multiple containers upon one another. *See* page 12, line 20 through page 13, line 33; FIGURES 6-8, and 10. Backing rings may be provided adjacent the first flange and/or the second flange, in order to reinforce the coupling formed between the first flange and the second flange. *See* page 9, lines 14-25; FIGURES 2-4.

6 **ISSUES**

1. Whether, under 35 U.S.C. § 102(b), Claims 24, 30-37, 43 and 44 are unpatentable over U.S. Patent No. 4,785,930, to Fischer, et al. ("*Fischer*").

2. Whether, under 35 U.S.C. § 103(a), Claims 25-26, and 46-47 are unpatentable over *Fischer*, in view of U.S. Patent No. 3,599,826 to Rocher ("*Rocher*").

3. Whether, under 35 U.S.C. § 103(a), Claims 25 and 46 are unpatentable over *Fischer*, in view of U.S. Patent No. 5,438,935 to Seitz ("*Seitz*").

4. Whether, under 35 U.S.C. § 103(a), Claim 28 is unpatentable over *Fischer*, in view of U.S. Patent No. 4,733,773 to LaBianca, et al. ("*LaBianca*").

5. Whether, under 35 U.S.C. § 103(a), Claim 29 is unpatentable over *Fischer*, in view of *LaBianca* and U.S. Patent No. 4,660,733 to Snyder, et al. ("*Snyder*").

6. Whether, under 35 U.S.C. § 103(a), Claim 45 is unpatentable over *Fischer*, in view of U.S. Patent No. 2,916,141 to Arnot ("*Arnot*").

7 **GROUPING OF CLAIMS**

Appellants hereby request that Claims 24-26, 28-37, and 43-47 not be grouped to stand or fall together. Instead, with respect to the issues identified in the immediately preceding Section of this Appeal Brief, pursuant to 37 C.F.R. § 1.92(c)(7), Appellants request

that the following claims be grouped together for purposes of this Appeal. Appellants have provided an explanation of why such groups are separately patentable in the Argument section below.

1. Group 1: Claims 24, 28-37, and 43-47 may be deemed to stand or fall together for purposes of this Appeal.

2. Group 2: Claims 25 and 26 may be deemed to stand or fall together for purposes of this Appeal.

§ ARGUMENT

1. Claims 24, 30-37, 43 and 44 are patentable over *Fischer*, under 35 U.S.C. § 102(b).

Under 35 U.S.C. § 102, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); MPEP 2131 (emphasis added). "Distilling an invention down to the 'gist' or 'thrust' of an invention disregards the requirement of analyzing the subject matter 'as a whole'." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303 (Fed. Cir. 1983, *cert. denied*, 469 U.S. 851 (1984)); MPEP 2141.02.

A. *Fischer does not disclose, teach, or suggest a first flange that "extends from the outer surface of the storage vessel at a location between the access opening and the stacking lug, thereby forming a cylindrical neck between the access opening and the stacking lug."*

Claim 24 is directed to a container that includes a storage vessel with an interior compartment, and an access opening at one end. A generally rectangular stacking lug is disposed upon an outer surface of the storage vessel. A first flange extends from the outer surface of the storage vessel at a location between the access opening and the stacking lug thereby forming a cylindrical neck between the access opening and the stacking lug. *Fischer* does not disclose, teach, or suggest each of these limitations.

The Final Office Action contends that the first flange is disclosed by the "outwardly curled end edge of tube 2 as best shown in FIG. 3 and 5" of *Fischer*. See *Final Office Action*, page 2. However, the "curled end edge of tube 2" to which the Final Office Action refers actually defines the access opening. Since the "outwardly curled end edge" forms the access opening, it cannot extend from the outer surface of the storage vessel at a location between the access opening and the stacking lug", as required by Claim 24. Even if the "outwardly curled end edge" of *Fischer* qualified as a flange, it cannot be located between itself and a stacking lug. The Final Office Action readily admits that the "outwardly curled end edge" forms the opening at page 2, where it states "the left side of the first flange defines the access opening shown in Fig. 5 . . .".

B. Fischer does not disclose, teach, or suggest "the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap."

Applicant respectfully contends that the "outwardly curled end edge of tube 2" is not "sized to cooperate with" the edge of hinged lid 6 of *Fischer*. With reference to Figures 2, 3, 5 and 6 of *Fischer*, it is clear that there is no cooperation between "outwardly curled end edge of tube 2" and the edge of hinged lid 6 of *Fischer*. Therefore, the "outwardly curled end edge of tube 2" is not "sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap", as required by Claim 24.

C. Fischer does not disclose, teach, or suggest "a generally rectangular first stacking lug being disposed upon the outer surface and having a generally cylindrical, tubular interior diameter operable to receive the storage vessel therein."

The Final Office Action contends that these limitations are met by collar 8 of *Fischer*. However, the collar 8 of *Fischer* does not include a "generally cylindrical, tubular interior diameter operable to receive the storage vessel therein." As illustrated in Figure 2, collar 8 includes a top face (stacking surface 3), bottom face (stacking surface 4), front face (upon which bracket 22 is provided), and a rear face (opposite the front face). The volume between these four faces is hollow. Therefore, container tube 2(a) is disposed within a circular opening of the front face, and a circular opening of the rear face of the collar 8. Since these opening are not connected, *Fischer* does not disclose, teach, or suggest a stacking lug having "a generally cylindrical, tubular interior diameter operable to received the storage vessel therein", as required by Claim 24.

For at least the reasons discussed in paragraphs A-C above, Applicant respectfully contends that Claim 24 is patentably distinguishable from *Fischer*.

Claims 30-37, 43 and 44 each depend, either directly or indirectly, from independent Claim 24. Therefore, Applicant respectfully contends that Claims 30-37, 43 and 44 are each patentably distinguishable from *Fischer* for example, for the reasons discussed above with regard to Claim 24.

Claims 30-37, 43 and 44 include additional limitations that further distinguish the present invention from the apparatus disclosed in *Fischer*. For example, Claim 34 includes the limitation "wherein the storage vessel and removable end cap are operable to form a pressure vessel." *Fischer* does not disclose, teach, or suggest such limitations.

2. Claims 25, 26, 46 and 47 are patentable over *Fischer*, in view of *Rocher*.

In order to establish a *prima facie* case of obviousness of a claimed invention, **all** claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974).

Each of Claims 25, 26, 46 and 47 depend, either directly or indirectly, from independent Claim 24. Therefore, Applicant respectfully contends that Claims 25, 26, 46 and 47 are patentably distinguishable from the references cited by the Examiner for example, for the same reasons discussed above with regard to Claim 24.

Furthermore, the Examiner relies upon *Rocher* as teaching a "backing ring (19) which backs the first flange on the storage vessel (11) and also the second flange (22) on the end cap (16)." (*See* Office Action, Page 3). Applicant respectfully traverses this rejection.

Claim 25 includes all of the limitations of Claim 24, and further includes "a first backing ring having an opening configured to receive the storage vessel therethrough, the backing ring contacting a side of the first flange opposite the access opening and being operable to provide support to the first flange." Furthermore, in accordance with Claim 24, the first flange "extends from an outer surface of the storage vessel." The Examiner seems to suggest that the clamping ring (19) of *Rocher* is analogous to the backing ring of Claim 25. However, clamping ring (19) does not support the storage vessel of *Rocher*, nor does it support any "flange" that extends from an outer surface of the storage vessel.

Furthermore, clamping ring (19) of *Rocher* does not include "an opening configured to receive the storage vessel therethrough" as in Claim 25. Instead, clamping ring (19) covers the upper portion of end cap (16), when its in the installed position. (*See Rocher*, FIGURE 2). Similarly, clamping ring (19) does not include "an opening configured to receive the end cap therethrough" as in Claim 26.

3. Claims 25 and 46 are patentable over *Fischer*, in view of *Seitz*.

For the same reasons discussed above with regard to paragraph 2 above, Applicant respectfully contends that Claim 25 is patentable over *Fischer*, in view of *Seitz*. *Fischer* and *Seitz* do not disclose, teach or suggest "a first backing ring having an opening configured to receive a storage vessel therethrough, the backing ring contacting a side of the first flange opposite the access opening and being operable to support the first flange."

4. Claim 28 is patentable over *Fischer*, in view of *LaBianca*.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). As discussed above, *Fischer* does not disclose, teach, or suggest a flange or second flange, as required by Claim 28, which incorporates all of the limitations of Claim 24. Nor does *LaBianca*. Therefore, Applicant respectfully contends that Claim 28 is patentably distinguishable from *Fischer* in view of *LaBianca*, for example, for the same reasons discussed above with regard to Claim 24.

5. Claim 29 is patentable over *Fischer*, in view of *LaBianca* and *Snyder*.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). As discussed above, *Fischer* does not disclose, teach, or suggest a first flange, or a second flange. Applicant respectfully contends that *LaBianca* and *Snyder* also fail to disclose a first flange or a second flange. Since Claim 29 depends from Claim 24, Applicant contends that Claim 29 is patentably distinguishable from *Fischer* in view of *LaBianca* and *Snyder*, for example for the same reasons discussed above with regard to Claim 24.

6. Claim 45 is patentable over *Fischer*, in view of *Arnot*.

Claim 45 depends from Claim 24. Therefore, Applicant respectfully contends that Claim 45 is patentably distinguishable from *Fischer* in view of *Arnot* for example, for the same reasons discussed above with regard to Claim 24.

NO SUGGESTION OR MOTIVATION TO COMBINE CITED REFERENCES

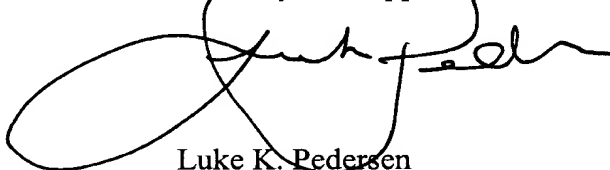
With regard to the rejections of paragraphs 2-6, the Examiner relies upon various combinations of cited references to support obviousness rejections. However, to combine references in order to defeat an application under 35 U.S.C. § 103, "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." (Manual of Patent Examining Procedure (MPEP) §2143). Additionally, the teaching or suggestion to make the asserted combination of prior art must be found in the references, not in the application's disclosure. MPEP §2143 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). Applicant respectfully submits that the Examiner failed to provide such suggestion or motivation to combine the references in the manner proposed by the Examiner, and that no such suggestion or motivation exists.

CONCLUSION

For the reasons given in the foregoing discussion, it is respectfully submitted that the rejection of each of Claims 24-26, 28-37, and 43-47 is erroneous, and reversal of the rejection of each of these claims is respectfully requested.

A check in the amount of \$330.00 is enclosed to satisfy the required filing fee. Applicant believes no other fee is due, however; should additional fees be due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Luke K. Pedersen
Reg. No. 45,003

Date: 12/3/03

BAKER BOTTS, L.L.P.
2001 Ross Avenue
Suite 600
Dallas, TX 75201-2980
(214) 953.6655

Enclosure:

Appendix A – Claims on Appeal
Check in the amount of \$330.00

¶ APPENDIX A – CLAIMS ON APPEAL

1. (Canceled)
2. (Canceled)
3. (Canceled)
4. (Canceled)
5. (Canceled)
6. (Canceled)
7. (Canceled)
8. (Canceled)
9. (Canceled)
10. (Canceled)
11. (Canceled)
12. (Canceled)
13. (Canceled)
14. (Canceled)
15. (Canceled)

16. (Canceled)

17. (Canceled)

18. (Canceled)

19. (Canceled)

20. (Canceled)

21. (Canceled)

22. (Canceled)

23. (Canceled)

24. A container, comprising:

a storage vessel with an interior compartment, and an access opening at one end;

a removable end cap releasably and mechanically coupled to the storage vessel and operable to close the access opening;

a first flange extending from an outer surface of the storage vessel, the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap;

a generally rectangular first stacking lug being disposed upon the outer surface and having a generally cylindrical, tubular interior diameter operable to receive the storage vessel therein; and

wherein the first flange extends from the outer surface of the storage vessel at a location between the access opening and the stacking lug thereby forming a cylindrical neck between the access opening and the stacking lug.

25. The container of Claim 24, further comprising a first backing ring having an opening configured to receive the storage vessel therethrough, the backing ring contacting a side of the first flange opposite the access opening and being operable to provide support to the first flange.

26. The container of Claim 24, further comprising a first backing ring having an opening configured to receive the end cap therethrough, the first backing ring contacting a side of the second flange opposite the storage vessel and being operable to provide support to the first flange.

27. **(Not Presented for Appeal)** The container of Claim 25, further comprising a second backing ring having an opening configured to receive the end cap therethrough, the second backing ring contacting a side of the second flange opposite the storage vessel and being operable to provide support to the first flange.

28. The container of Claim 24, wherein the storage vessel is formed from extruded, high-density polyethylene.

29. The container of Claim 24, wherein the stacking lug is formed from rotationally molded, cross-linked, high density polyethylene.

30. The container of Claim 24, further comprising a manual pressure relief valve operable to create a path of fluid communication between the interior compartment and ambient environment.

31. The container of Claim 24, wherein the first stacking lug comprises:
a housing with an opening disposed therethrough, the housing having a first face and a second face opposite the first face; and
a first protrusion on the first face of the housing.

32. The container of Claim 31, further comprising a cavity on the second face adapted to receive a second protrusion of similar size and configuration as the first protrusion, to form a releasable nested fit between the second protrusion and the cavity.

33. The container of Claim 31, wherein the first face is adapted to cooperate with a third face of a separate component of similar size and configuration as the container, such that force from the weight of the separate component is transferred from the third face to the first face when the component is stacked upon the container.

34. The container of Claim 24, wherein the storage vessel and removable end cap are operable to form a pressure vessel.

35. The container of Claim 24, wherein the interior compartment is adapted to receive a round of ammunition therein.

36. The container of Claim 24, further comprising a lever clamp assembly being operable to couple the end cap and the storage vessel.

37. The container of Claim 24 wherein the stacking lug is permanently affixed to the storage vessel.

38. (Canceled)

39. (Canceled)

40. (Canceled)

41. (Canceled)

42. (Canceled)

43. The container of Claim 24, further comprising a lever clamp assembly coupled with the storage vessel, the lever clamp assembly having a first position in which the first flange is coupled with the second flange, and a second position in which the second flange is released from the first flange.

44. The container of Claim 24, further comprising a round of ammunition disposed at least partially within the storage vessel.

45. The container of Claim 24, further comprising a humidity indicator in communication with the interior compartment of the storage vessel.

46. The container of Claim 24, further comprising a first backing ring extending around the exterior surface of the vessel adjacent the first flange.

47. The container of Claim 24, further comprising a first backing ring extending around the exterior surface of the end cap adjacent the second flange.

48. **(Not Presented for Appeal)** The container of Claim 24, further comprising first and second backing rings extending around the exterior surface of the vessel and the exterior surface of the end cap, respectively, adjacent the first flange and the second flange, respectively.